

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VIRGINIA ARREDONDO-MACIAS,) Case No. 23-3599 FMO (AFMx)
individually and on behalf of all others)
similarly situated,)
Plaintiff,) **ORDER REMANDING ACTION**
v.)
SBM SITE SERVICES, LLC, et al.,)
Defendants.)

On March 14, 2023, Virginia Arredondo-Marcias (“plaintiff”) filed a complaint in the Los Angeles County Superior Court against SBM Site Services, LLC (“SBM”) and ABM Industry Groups, LLC (“ABM” or “defendant”). (See Dkt. 1, [ABM’s] Petition and Notice of Removal of Civil Act (“NOR”) at ¶ 2); (Dkt. 4-1, Declaration of Alejandro G. Ruiz in Support of NOR, Exhibit (“Exh.”) A (“Complaint”)). The Complaint asserts eight causes of action under California law: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to maintain records; (5) waiting time penalties; (6) failure to furnish accurate itemized statements; (7) unfair and unlawful business practices; and (8) penalties pursuant to the Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698, et seq. (See Dkt. 4-1, Complaint at ¶¶ 14-48).

1 On May 11, 2023, ABM removed the action to this court on grounds of federal question
 2 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441, and § 301 of the Labor Management
 3 Relations Act (“LMRA”), 29 U.S.C. § 185(a). (See Dkt. 1, NOR at ¶ 1). Having reviewed and
 4 considered the pleadings and all the materials submitted by ABM, the court hereby remands this
 5 action to state court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c).

6 **LEGAL STANDARD**

7 Removal of a civil action from the state court where it was filed is proper if the action might
 8 have originally been brought in federal court. See 28 U.S.C. § 1441(a) (“Except as otherwise
 9 expressly provided by Act of Congress, any civil action brought in a State court of which the district
 10 courts of the United States have original jurisdiction, may be removed by the defendant or the
 11 defendants, to the district court[.]”). “The burden of establishing federal jurisdiction is upon the
 12 party seeking removal[.]” *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). As
 13 such, any doubts are resolved in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
 14 1992) (“We strictly construe the removal statute against removal jurisdiction. Federal jurisdiction
 15 must be rejected if there is any doubt as to the right of removal in the first instance.”) (internal
 16 citations omitted). Indeed, “[i]f at any time before final judgment it appears that the district court
 17 lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

18 **DISCUSSION**

19 Defendant contends that “[t]his court has jurisdiction over this action because this Court has
 20 federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441, and pursuant to Section 301 of
 21 the Labor Management Relations Act, 29 U.S.C. §185(a)[.]” (Dkt. 1, NOR at ¶ 1). “As the master
 22 of the complaint, a plaintiff may defeat removal by choosing not to plead independent federal
 23 claims.” *ARCO Envt'l Remediation, L.L.C. v. Dep't of Health and Envt'l Quality of Montana*, 213
 24 F.3d 1108, 1114 (9th Cir. 2000). The existence of a federal defense is not enough to justify
 25 removal to federal court. See *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393, 107 S.Ct. 2425, 2430
 26 (1987) (“[I]t is now settled law that a case may not be removed to federal court on the basis of a
 27 federal defense, including the defense of pre-emption, even if the defense is anticipated in the
 28 plaintiff's complaint[.]” (emphasis in original)).

1 The well-pleaded complaint rule “provides that federal jurisdiction exists only when a federal
 2 question is presented on the face of the plaintiff’s properly pleaded complaint.” Smallwood v.
 3 Allied Van Lines, Inc., 660 F.3d 1115, 1120 (9th Cir. 2011) (quoting Caterpillar, 482 U.S. at 392,
 4 107 S.Ct. at 2429). However, “[t]he jurisdictional doctrine of complete preemption serves as an
 5 exception to the well-pleaded complaint rule.” Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 861
 6 (9th Cir. 2003). The complete preemption doctrine “provides that, in some instances, the
 7 preemptive force of [federal statutes] is so strong that they completely preempt an area of state
 8 law.” Id. at 861-62 (internal quotation marks omitted). The “proper inquiry focuses on whether
 9 Congress intended the federal cause of action to be exclusive[.]” Beneficial Nat’l. Bank v.
 10 Anderson, 539 U.S. 1, 9 n. 5, 123 S.Ct. 2058, 2064 (2003). “[O]nce an area of state law has been
 11 completely pre-empted, any claim purportedly based on that pre-empted state law is considered,
 12 from its inception, a federal claim, and therefore arises under federal law.” Caterpillar, 482 U.S.
 13 at 393, 107 S.Ct. at 2430. Complete preemption “arises only in ‘extraordinary’ situations.” Ansley,
 14 340 F.3d at 862.

15 Defendant asserts that the Complaint “arises under the laws of the United States” and
 16 removal is warranted pursuant to § 301 of the LMRA because the Complaint “requires the
 17 interpretation and application of [a] collective-bargaining agreement [(“CBA”)] governing Plaintiff’s
 18 employment.” (Dkt. 1, NOR at ¶ 9). Section 301 of the LMRA provides:

19 Suits for violation of contracts between an employer and a labor organization
 20 representing employees in an industry affecting commerce as defined in this
 21 chapter, or between any such labor organizations, may be brought in any
 22 district court of the United States having jurisdiction of the parties, without
 23 respect to the amount in controversy or without regard to the citizenship of
 24 the parties.

25 29 U.S.C. § 185(a). “The Supreme Court decided early on that in enacting this statute, Congress
 26 charged federal courts with a ‘mandate . . . to fashion a body of federal common law to be used
 27 to address disputes arising out of labor contracts.’” Burnside v. Kiewit Pac. Corp., 491 F.3d 1053,
 28

1 1059 (9th Cir. 2007) (quoting Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 209, 105 S.Ct. 1904,
 2 1910 (1985)) (alteration in original). “As a result of this broad federal mandate, . . . the preemptive
 3 force of section 301 is so powerful as to displace entirely any state cause of action for violation
 4 of contracts between an employer and a labor organization.” Id. (internal quotation marks
 5 omitted). Yet, “not every dispute concerning employment, or tangentially involving a provision of
 6 a collective-bargaining agreement, is pre-empted by § 301.” Kobold v. Good Samaritan Reg’l
 7 Med. Ctr., 832 F.3d 1024, 1032 (9th Cir. 2016) (internal quotation marks omitted).

8 To determine if a plaintiff’s state law claim is preempted by § 301, the court engages in a
 9 two-step inquiry. See Kobold, 832 F.3d at 1032. First, the court must determine “whether the
 10 asserted cause of action involves a right conferred upon an employee by virtue of state law, not
 11 by a CBA. If the right exists solely as a result of the CBA, then the claim is preempted, and the
 12 analysis ends there.” Id. (internal alteration marks omitted). To make this determination, the court
 13 “must focus its inquiry on the legal character of a claim[.]” Id. at 1033 (internal quotation marks
 14 omitted) (emphasis in original). “A claim brought in state court on the basis of a state-law right that
 15 is independent of rights under the collective-bargaining agreement, will not be preempted, even
 16 if a grievance arising from precisely the same set of facts could be pursued.” Valles v. Ivy Hill
 17 Corp., 410 F.3d 1071, 1076 (9th Cir. 2005) (internal quotation marks omitted).

18 Second, “[i]f the court determines that the right underlying the plaintiff’s state law claim(s)
 19 exists independently of the CBA, it moves to the second step, asking whether the right is
 20 nevertheless substantially dependent on analysis of a collective-bargaining agreement.” Kobold,
 21 832 F.3d at 1032 (internal quotation marks omitted). This analysis “turns on whether the claim can
 22 be resolved by ‘looking to’ versus interpreting the CBA. If the latter, the claim is preempted; if the
 23 former, it is not.” Id. at 1033 (internal quotation and alteration marks omitted). “The plaintiff’s
 24 claim is the touchstone for this analysis; the need to interpret the CBA must inhere in the nature
 25 of the plaintiff’s claim.” Cramer v. Consol. Freightways, Inc., 255 F.3d 683, 691 (9th Cir. 2001).
 26 “[A]lleging a hypothetical connection between the claim and the terms of the CBA is not enough
 27 to preempt the claim: adjudication of the claim must require interpretation of a provision of the
 28 CBA.” Id. at 691-92.

1 Defendant does not dispute that plaintiff's claims are all grounded in state law. (See Dkt.
 2 4-1, Complaint at ¶¶ 14-48); (see, generally, Dkt. 1, NOR). It is well-settled that, if a plaintiff's
 3 claims are "plainly based on state law, § 301 preemption is not mandated simply because the
 4 defendant refers to the CBA in mounting a defense." Kobold, 832 F.3d at 1033 (internal quotation
 5 marks omitted). Because defendant is essentially relying on a defensive use of the CBA, there
 6 is no preemption here. See id.; see also Burnside, 491 F.3d at 1060 ("[R]eliance on the CBA as
 7 an aspect of a defense is not enough to inject[] a federal question into an action that asserts what
 8 is plainly a state-law claim.") (internal quotation marks omitted); Humble v. Boeing Co., 305 F.3d
 9 1004, 1008 (9th Cir. 2002) ("[D]efensive reliance on the terms of the CBA, mere consultation of
 10 the CBA's terms, or a speculative reliance on the CBA will not suffice to preempt a state law
 11 claim.").

12 Despite the fact that plaintiff asserts only state law claims, defendant argues that
 13 "[p]laintiff's state law wage and hour claims, as well as [p]laintiff's recordkeeping and wage
 14 statement claims, are necessarily preempted because their adjudication would require this Court
 15 (or the trier of fact) to interpret the provisions of the CBA." (See Dkt. 1, NOR at ¶ 15). But
 16 defendant fails to present any provisions that are disputed by the parties, or any that are complex
 17 enough to require interpretation as opposed to simple application. (See id. at ¶¶ 16-22). "When
 18 the parties do not dispute the meaning of contract terms, the fact that a CBA will be consulted in
 19 the course of state law litigation does not require preemption." Ward v. Circus Circus Casinos, Inc., 473 F.3d 994, 998 (9th Cir. 2007); see Livadas v. Bradshaw, 512 U.S. 107, 125, 114 S.Ct. 2068, 2079 (1994) (holding that "the mere need to 'look to' the collective-bargaining agreement
 22 . . . is no reason to hold the state-law claim defeated by § 301"); Burnside, 491 F.3d at 1060 ("[W]e
 23 know that neither look[ing] to the CBA merely to discern that none of its terms is reasonably in
 24 dispute, nor the simple need to refer to [its terms], is enough to warrant preemption.") (internal
 25 quotation marks and citations omitted); see, e.g., Acosta v. AJW Const., 2007 WL 4249852, *4
 26 (N.D. Cal. 2007) (finding action "not preempted by ERISA" where "claims for unpaid wages
 27 accrued during paid time off . . . require little more than cursory consultation with the collective
 28 bargaining agreement").

1 For example, defendant asserts that the “CBA at issue contains provisions for meal and rest
 2 periods, provisions for the keeping of accurate records, and specific provisions covering payment
 3 of wages and overtime for union janitorial workers in the Bay Area. . . . Such claims are therefore
 4 subject to federal Section 301 preemption.” (Dkt. 1, NOR at ¶ 16). But the mere fact that plaintiff’s
 5 claims implicate wage and hour provisions in the CBA does not establish that the court would need
 6 to interpret provisions of the CBA. See Ward, 473 F.3d at 998; Livadas, 512 U.S. at 125, 114
 7 S.Ct. at 2079; Burnside, 491 F.3d at 1060.

8 Defendant also asserts that the CBA establishes collectively bargained grievance,
 9 arbitration, and mediation procedures as well as an “enforceable waiver of representative PAGA
 10 claims[.]” (See Dkt. 1, NOR at ¶¶ 17-21). But defendant fails to establish any relevant aspect of
 11 or language in these provisions that would require interpretation by the court. Indeed, plaintiff’s
 12 Complaint does not raise a single claim that is based on the CBA’s grievance, arbitration, or
 13 mediation procedures. (See, generally, Dkt. 4-1, Complaint); see Humble, 305 F.3d at 1008
 14 (“[T]he plaintiff’s claim is the touchstone for the preemption analysis[.]”) (emphasis added).
 15 Defendant’s vague and conclusory assertions are no more than an attempt to manufacture
 16 preemption by invoking purported CBA disputes unrelated to the resolution of plaintiff’s claims as
 17 pleaded in the Complaint. See, e.g., Burnside, 491 F.3d at 1072 (citing examples of employers
 18 attempting to manufacture preemption by invoking CBA disputes unrelated to the resolution of the
 19 claims at issue).

20 At best, defendant’s assertions do no more than establish “a hypothetical connection
 21 between the claim and the terms of the CBA[.]” Alaska Airlines Inc. v. Schurke, 898 F.3d 904, 921
 22 (9th Cir. 2018) (en banc) (internal quotation marks omitted). But a “hypothetical connection
 23 between [plaintiff’s] claim[s] and the terms of the CBA is not enough to preempt the claim[s][.]”
 24 Id. (internal quotation marks omitted). Defendant’s references to the CBA’s grievance, arbitration,
 25 and mediation procedures, as well as the PAGA waiver, in the NOR, (see Dkt. 1, NOR at ¶¶ 18-
 26 21), are simply insufficient to constitute grounds for removal.

In short, defendant has not identified any disputed terms in the CBA or any terms complex enough to require interpretation rather than mere application of the CBA and its provisions. (See, generally, Dkt. 1, NOR). As a result, plaintiff's action is not preempted by § 301 of the LMRA.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. The above-captioned action shall be **remanded** to the Superior Court of the State of California for the County of Los Angeles for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).
 2. The Clerk shall send a certified copy of this Order to the state court.
 3. Any pending motion is denied as moot.

Dated this 5th day of June, 2023.

/s/
Fernando M. Olguin
United States District Judge